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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 WESTERN DIVISION  
12

13 STARQUEST VENTURES INC. dba  
14 Stelo, a California Corporation,

15 Plaintiff,

16 v.

17 DEXCOM, INC., a Delaware Corporation;  
18 and DOES 1-10, inclusive,

19 Defendants.  
20  
21  
22

Case No.: 2:25-cv-05470-AH-JPR  
Hon. Anne Hwang

**STARQUEST VENTURES INC.'S  
MEMORANDUM OF POINTS AND  
AUTHORTIES IN SUPPORT OF  
MOTION FOR PRELIMINARY  
INJUNCTION**

*[Filed concurrently with Notice of  
Motion and Motion; Declarations of  
Paul Rampel, Jessica Sheridan,  
Kimberly B. Gatling, and Meeghan H.  
Tirtasaputra; Compendium of Exhibits;  
Notice of Lodging; and [Proposed]  
Order]*

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1 **I. INTRODUCTION**

2 Since its launch in August 2024, more than 3,000 customers of the Stelo-  
3 branded continuous glucose monitor (the “Stelo Monitor”) sold and marketed by  
4 Defendant Dexcom, Inc. (“Dexcom”) have mistakenly sought support from Plaintiff  
5 Stelo (“Stelo”), a San Francisco based software company incorporated as StarQuest  
6 Ventures, Inc. (“StarQuest”), believing that Stelo is affiliated with Dexcom.  
7 Messages left include those seeking help with potentially serious health conditions  
8 like having a needle stuck in a user’s arm and problems with the monitor’s software  
9 application.

10 Stelo is the senior user. Since September 2023, Stelo has held a federal  
11 registration in its name in the software class. Dexcom knew of Stelo’s registration  
12 and use before launching its Stelo Monitor. Even though the examiner of Dexcom’s  
13 federal trademark application issued an Office Action finding a likelihood of  
14 confusion with Stelo’s registration, Dexcom launched the Stelo Monitor anyway.

15 While customers seeking Stelo’s data connectivity, replication, and integration  
16 software are not likely to purchase a Stelo Monitor by mistake, the confused  
17 customers of the Stelo Monitor overwhelmingly demonstrate market identification of  
18 Stelo with the Stelo Monitor and confuse Stelo as a Dexcom affiliate. This loss of  
19 independent source identification renders Stelo beholden to the Stelo Monitor’s  
20 reputation, a public reputation that can quickly turn as it did for the makers of Boar’s  
21 Head meats and cheeses and Tesla cars.

22 This case is a paradigm of reverse post-sale confusion where Goliath trusts it  
23 can quickly overwhelm a much smaller rights holder. Such reverse confusion is  
24 actionable under the Lanham Act as well as California statutory and common law  
25 trademark protection. Each scheme militates against likely consumer confusion, a  
26 focus heightened when the confusion relates to a health care product. While courts  
27 consider several factors to determine a likelihood of pre-trial confusion, there is no  
28 greater indicia of likely future consumer confusion than the existence of substantial



1 existing consumer confusion. Simply, the *Sleekcraft* factors stand in as a proxy in the  
2 absence of direct evidence of confusion, which is overwhelmingly present here.  
3 *Network Automation, Inc. v. Advanced Systems Concepts, Inc.*, 638 F.3d 1137, 1145  
4 (9th Cir. 2011) (“The *Sleekcraft* factors are intended as an adaptable proxy for  
5 consumer confusion, not a rote checklist.”)

6 Unless Dexcom is preliminarily enjoined from using “Stelo” to refer to its  
7 monitor, unprecedented confusion will continue that is both irreparably decimating  
8 Stelo’s goodwill and interfering with Dexcom’s own customers’ ability to obtaining  
9 support for their medical device. Since Dexcom’s infringement is at least reckless, if  
10 not intentional, a nominal bond is appropriate, at most. Simply, Stelo is likely to  
11 prevail, Dexcom cannot overcome Stelo’s presumed irreparable harm, and both the  
12 balance of equities and public interest tip in favor of a preliminary injunction.

## 13 **II. BACKGROUND**

### 14 **A. Stelo**

15 Stelo is a small, privately held company headquartered in San Francisco that,  
16 for the past 30 years, has provided purpose data integration software solutions across  
17 the economy, including to the healthcare and pharmaceutical industry.<sup>1</sup> Stelo refers  
18 to its ability to integrate systems as creating a “Stelo Ecosystem.” *Id.* at ¶ 3. To date,  
19 Stelo’s business has been enterprise focused and is marketed directly to IT  
20 professionals across all industries. *Id.* Stelo’s marketing strategy focuses on  
21 strengthening both organic and paid channels (e.g., Google Ads, Bing) to drive  
22 measurable growth in website traffic, leads, and brand awareness. *Id.* The key areas  
23 of focus are organic search rankings, improving user engagement with search console  
24 queries, and expanding paid campaigns with refined target audiences. *Id.*

25 Stelo’s software is available for purchase as a B2B offering via direct sale and  
26 through reseller partnerships and Microsoft’s Azure Marketplace. Stelo is actively  
27

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28 <sup>1</sup> Accompanying Declaration of Paul Rampel (“Rampel Decl.”) ¶ 2.



1 working on offerings in the Google Cloud Marketplace and Amazon with a release  
2 date in the second half of 2025. Rampel Decl. ¶ 2.

3 Due to the nature of its product offering, being always available is mission  
4 critical to its customers. *Id.* at ¶ 7. For this reason, Stelo has always maintained a  
5 robust support system to quickly respond to client needs and to promptly address any  
6 system outages. *Id.* While support is critical, prior to the launch of the Stelo Monitor,  
7 Stelo would receive about a dozen support calls a month.<sup>2</sup>

8 Stelo intends to broaden its reach to include selling on online marketplaces like  
9 Amazon and to deploy consumer-focused products, including applications for  
10 smartphones that can be downloaded from the Apple or Android app stores. Rampel  
11 Decl. ¶ 4. Stelo's current annual revenues are about \$4 million, and it expends  
12 approximately 18% of annual revenue on marketing and advertising. *Id.* at ¶ 2.

13 In 2021, Stelo concluded that its StarQuest name had lost its distinctiveness  
14 due to the plethora of other companies and products with similar names.<sup>3</sup> As such,  
15 StarQuest partnered with a marketing firm to create a new brand, conducting an  
16 extensive brand and replication market analysis in doing so. *Id.* StarQuest started  
17 doing business as Stelo by October of 2022, notifying its customers and the public of  
18 the change. Rampel Decl. ¶ 9; Exs. 21-23. The name was chosen as a bridge between  
19 Stelo's previous "star" iconography and the term "stem" to mirror Stelo's messaging  
20 around data ecosystems, the Stelo Ecosystem. Rampel Decl. ¶ 8.

21 In January 2022, Stelo filed an intent to use application with the United States  
22 Patent and Trademark Office ("USPTO") seeking registration of the Stelo mark in  
23 International Class 009 for computer software, namely downloadable computer  
24 software in the field of data replication and software maintenance instillation. Ex. 2

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25 <sup>2</sup> Accompanying Declaration of Jessica Sheridan ("Sheridan Decl.") at ¶ 7.

26 <sup>3</sup> See Rampel Decl. ¶ 8, and Stelo Rebranding Presentation, a copy of which is  
27 attached to the accompany Compendium of Exhibits as Exhibit 20. All subsequent  
28 references to "Ex." refer to documents attached to the Compendium authenticated  
in the accompanying declarations.

1 at 68. Stelo received a notice of allowance from the USPTO on January 24, 2023.  
2 Ex. 2 at 52. Registration of the Stelo mark was received on September 12, 2023,  
3 without any limitation on font, style, size, or color and given registration number  
4 7,165,605 (“the ‘605 Registration”). *Id.* at 11. Concomitant with its pursuit of this  
5 federal registration, Stelo obtained similar foreign registrations.<sup>4</sup>

6 Since its adoption, Stelo has used that name exclusively to refer to its business  
7 and its products. Rampel Decl. ¶ 9. Prior to Dexcom’s launch of the Stelo Monitor,  
8 Stelo considered its rebranding effort a success. *Id.* Stelo had transferred the  
9 goodwill developed in the StarQuest name to Stelo and believed the more distinctive  
10 name Stelo name had only enhanced its reputation and goodwill. *Id.* On its website  
11 and in marketing, Stelo may dress its mark as follows:





12 **B. Dexcom**

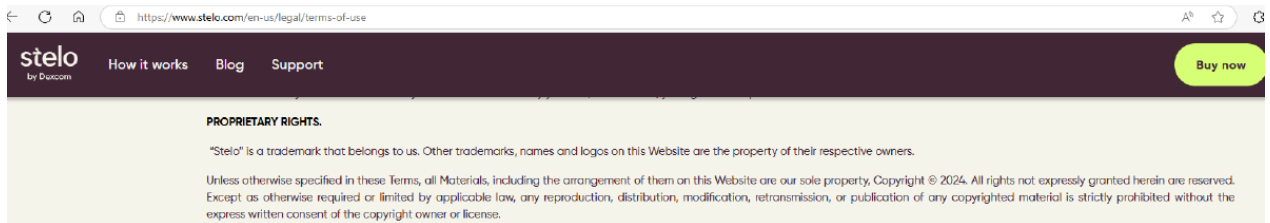
13 Dexcom has enjoyed meteoric growth, with revenues increasing from \$250  
14 million in 2014 to more than \$4 billion in 2024. Ex. 3 at 78. In 2024, Dexcom spent  
15 nearly \$300 million on marketing. *Id.* at 224. Prior to launching the Stelo Monitor,  
16 Dexcom’s primary business line was continuous glucose monitoring systems for  
17 diabetic patients by prescription. *Id.* at 86-87. Dexcom distinguished itself in the  
18 market with its software solutions that allowed continuous glucose reading to be  
19 clearly relayed to patients over their smart phones or other devices. *Id.* at 79.  
20 Dexcom’s current prescription-based offerings are branded as the G6, launched in  
21 2018, and the G7, launched in 2022. *Id.* at 86-87.

22 In December of 2023, Dexcom filed for premarketing approval with the Food  
23 and Drug Administration (“FDA”) for a first of its kind over-the-counter continuous  
24 glucose monitor for prediabetic patients based on the system’s substantial  
25 equivalence to its existing G7 prescription-based system. Dexcom received that  
26 approval in March of 2024. Ex. 4. at 236; Ex. 5.

27  
28 <sup>4</sup> See accompanying declaration of Kim Gatling (“Gatling Decl.”) at ¶ 5.

1 Even before it sought approval from the FDA, Dexcom had already decided to  
2 brand its over-the-counter product as Stelo, filing a trademark application with the  
3 USPTO in both the software and medical device classes on November 16, 2023, more  
4 than a month after the USPTO issued Stelo its ‘605 Registration. Ex. 6 at 393. On  
5 July 2, 2024, the examiner issued an Office Action finding that a likelihood of  
6 confusion existed with respect to its application in the software class and Stelo’s ‘605  
7 Registration.<sup>5</sup> Ex. 5 at 246. Despite this finding, Dexcom went forward and launched  
8 its Stelo Monitor anyway. In an acknowledgment of the potential confusion with the  
9 senior user, Dexcom refers to its Stelo  
10 Monitor on its website and in advertising as   Stelo by Dexcom  
11 Stelo by Dexcom. Exs. 8 -10. Stelo website Google Play store

12 With respect to its ownership of the “Stelo” mark, Dexcom says in its terms of  
13 use “‘Stelo’ is a trademark that belongs to us.” Ex. 24 at 687.



14  
15  
16  
17  
18 On December 31, 2024, and after receiving a three-month extension, Dexcom  
19 responded to the Office Action letter challenging the examiner’s conclusions. Ex. 6  
20 at 337. The examiner has yet to answer Dexcom’s response. Ex. 6.

21 As one might expect from the first product in a new product category, the Stelo  
22 Monitor garnered significant media attention, including being named a leading  
23 technological innovation for 2024 by Time Magazine. Exs. 11-14. This attention  
24 can be seen from the fact that one would need to traverse 9 pages of a Google search  
25 for “Stelo” before getting to any reference to the senior user of the mark. Ex. 15.

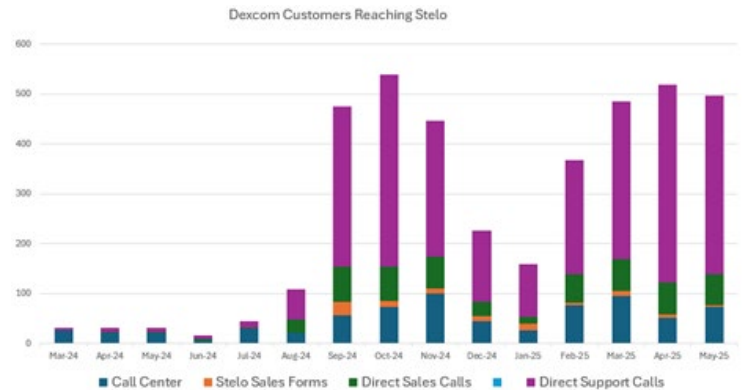
26  
27 <sup>5</sup> Stelo did not file an opposition to Dexcom’s registration in advance of the filing  
28 of this lawsuit because the USPTO had not published Dexcom’s intent to register  
this mark prior to its launch of the Stelo Monitor.

Curiously, however, Dexcom has not separately published any data on sales or revenues derived from such sales of its Stelo Monitor. Exs. 3, 16, 17.

### C. Confusion in the Marketplace

In June 2024, prior to the launch of the Stelo Monitor, Stelo’s customer support phone line received a total of 10 calls. Sheridan Decl. ¶ 7. By September, this amount ballooned to more than 300,

almost all of which were meant for Dexcom and concerned the Stelo Monitor. Such inquiries are not limited to its support line but also are received by its sales line, call center, and by other means. Exs.



18, 19; Sheridan Decl, ¶¶ 8-9.

As a result of this inundation, Stelo modified its call center protocols to ask right at the outset whether the call relates to Stelo’s software offerings or a continuous glucose monitoring. Sheridan Decl. ¶ 8. Despite the prompt, customers persist, arguing that Stelo is an affiliate of Dexcom’s or that Dexcom directed the customer to call this number. *Id.* Stelo retains all 3,000 plus voice and text inquiries received and are lodging, to protect privacy, hundreds of examples with the Court on an excypted USB. *Id.* A few examples of these confused inquires, which have been redacted to preserve patient confidentiality, are below:

- 3/26/2025 msg 1419 – “I purchased [your] ... glucose sensor in October of 2024....[My wife] started using it and after using it for about 8 days or so the sensor came apart. It came out of the arm that my wife was using it for. I think it broke off and, I think where there is a needle or whatever is still embedded in the, inside her. I was wondering what we need to do and what the procedure is ....”
- 3/14/2025 msg. 838 – “I am calling for support with the Stelo CDM monitor. I inserted a new monitor and have tried to troubleshoot myself but it will not connect. The app will not connect to the sensor, and I have more details to give over the phone once a human can reach me and talk to me about it.”

- 1 • 3/24/2025 msg. 1230 – “I’m calling about a sensor that’s connected  
2 and then disconnected within 24 hours. I did try to get help on the  
3 AI bot, but it was not successful, and I do need a replacement sensor  
4 sent as soon as possible because I do not have another sensor and  
5 I’m about to run out in a couple of days and I’m also travelling. So,  
6 if you could please give me a call back today.”
- 7 • 3/25/2025 msg. 1426 – “Hey this is already frustrating that nobody  
8 answers the phone. We need to know if you have a – if you use a  
9 receiver with yours because the cell phone is not going to work....  
10 Since you’re a division of Dexcom I don’t see why you don’t answer  
11 the phone and we have to leave a message.”
- 12 • 3/28/2025 msg. 1232 – “Good afternoon, I was directed to this  
13 number by Dexcom Technical Support. I am needing help with a  
14 Stelo device.”
- 15 • 4/2/2025 msg. 1214 – “I’m actually calling regarding my Dexcom  
16 Stelo order. This was the number I was given by Dexcom  
17 themselves. Supposedly -- I’ve seen my credit card was charged on  
18 March 23rd, which now we’re pushing 2 weeks and I’ve still not  
19 received my sensors.”
- 20 • 4/15/2025 msg. 1313 – “I have a Stelo, just a brand new one that I  
21 tried to put on yesterday, something was wrong with it. The needle  
22 apparently grabbed the sensor wire so instead of inserting it into my  
23 arm, it actually pulled out of the back of the Stelo, and customer  
24 service from Dexcom gave me your number so I’m calling you to  
25 see what we can do about getting that replaced.”
- 26 • 4/30/2025 msg. 0519 – “I put on a new sensor this morning and  
27 during warm up it stopped and said “replace sensor.” Number one,  
28 I don’t have a replacement sensor, they are supposed to be shipped  
and I haven’t received them yet. Number two, when I filled out the  
form with Stelo but it did not ask me for the serial number, so I need  
somebody to give me a call back.”

20 Sheridan Dec. ¶ 10.

21 **D. Effort to Mitigate Confusion**

22 In March of 2024, Stelo learned that Dexcom had filed an application in the  
23 EU to register the “Stelo” mark for software, and Stelo thereafter filed an opposition.  
24 . Gatling Decl. ¶ 6. In June of 2024, Stelo’s European counsel received a settlement  
25 proposal from Dexcom that they discussed through August of 2024. *Id.* ¶ 7 In August  
26 2024, Dexcom’s United States counsel reached out to Dexcom’s counsel to further  
27 discuss a global settlement and the two discussed a possible coexistence relationship.  
28 *Id.* In October of 2024, Stelo informed Dexcom of the large number of calls Stelo

1 had received from confused customers of the Stelo Monitor and thereafter forwarded  
2 examples to Dexcom. *Id.* ¶ 8. By April 2025, Stelo relayed to Dexcom that it  
3 questioned whether coexistence was possible, and Dexcom then requested more  
4 examples of customer confusion. *Id.* ¶ 9. Stelo would eventually provide Dexcom  
5 hundreds of examples of confused customers. *Id.* While Dexcom, through its  
6 counsel, expressed a willingness to speak further, it suggested that since each  
7 operated in distinct markets and to distinct customers, there was no likelihood of  
8 confusion within the meaning of trademark law. *Id.* ¶ 10. With respect to the calls  
9 received by Stelo relating to the Stelo Monitor, Dexcom stated that such confusion  
10 was not actionable. *Id.* When the filing of this lawsuit failed to spawn further  
11 meaningful discussions, Stelo decided to bring the instant motion.

12 **E. Irreparable Harm**

13 The reckless introduction of another “Stelo Ecosystem” by Dexcom has  
14 created widespread confusion in the market. Rampel Decl. ¶ 13. The Dexcom version  
15 of Stelo is associated with subpar support, product defects, and diminished value—  
16 perceptions that are damaging the reputation of Stelo’s brand. *Id.* ¶ 14. The  
17 overlapping use of the Stelo name for similar products and services—particularly  
18 those involving mobile devices and cloud-based solutions—makes it difficult for  
19 customers, investors, and partners to distinguish between the two. *Id.* ¶ 15

20 This confusion is eroding the value and distinctiveness of the Stelo brand. *Id.*  
21 ¶ 16. Potential customers and investors are likely to disregard Stelo’s brand due to  
22 negative associations with Dexcom’s products. Stelo’s ability to attract and retain  
23 key employees is also at risk as the company struggles to differentiate itself and its  
24 offerings from Dexcom and its offerings. *Id.* ¶¶ 17-18. The resulting loss of goodwill,  
25 customer trust, and market position cannot be remedied by monetary damages alone.  
26 *Id.* ¶ 19. Absent an injunction, Stelo will be compelled to change its name again to  
27 preserve the identification of its offerings with a single source. *Id.* ¶ 21.  
28



1 **III. DISCUSSION**

2 **A. Standard of Proof**

3 “Injunctive relief is the remedy of choice for trademark and unfair competition  
4 cases, since there is no adequate remedy at law for the injury caused by a defendant’s  
5 continuing infringement.” *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d 1175,  
6 1180 (9th Cir. 1988); 15 U.S.C. § 1116(a). Upon a sufficient showing, a preliminary  
7 injunction is appropriate when “the court perceives a need to preserve the status quo.”  
8 *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988). The  
9 status quo does not refer to the status before the lawsuit began, but to “the last,  
10 uncontested status which preceded the pending controversy.” *Garcia v. Google, Inc.*,  
11 786 F.3d 733, 740 n.4 (9th Cir. 2015). In the trademark context, this means the status  
12 that existed “before [the alleged infringer] began using its allegedly infringing  
13 [mark].” *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000).

14 “To obtain a preliminary injunction, a party must show: (1) it will likely  
15 succeed on the merits, (2) it will likely suffer irreparable harm in the absence of  
16 preliminary relief, (3) the balance of the equities tips in its favor, and (4) the public  
17 interest favors an injunction.” *AK Futures LLC v. Boyd Street Distro, LLC*, 35 F.4th  
18 682, 688 (9th 2022). “The Ninth Circuit has adopted a ‘sliding scale approach,’ such  
19 that “‘serious questions going to the merits’ and a balance of hardships that tips  
20 sharply towards the plaintiff can support issuance of a preliminary injunction, so long  
21 as the plaintiff also shows that there is a likelihood of irreparable injury and that the  
22 injunction is in the public interest.” *Kiva Health Brands LLC v. Kiva Brands Inc.*,  
23 402 F.Supp.3d 877, 883 (N.D. Cal. 2019) (quoting *Alliance for the Wild Rockies v.*  
24 *Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011). “For the purposes of injunctive  
25 relief, ‘serious questions’ refers to questions which cannot be resolved one way or  
26 the other at the hearing on the injunction and as to which the court perceives a need  
27 to preserve the status quo lest one side prevent resolution of the questions or  
28 execution of any judgment by altering the status quo.” *Marcos*, 862 F.2d at 1362.



1 “[T]he burdens at the preliminary injunction stage track the burdens at trial.”  
2 *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429  
3 (2006). Thus, “once the moving party has carried its burden of showing a likelihood  
4 of success on the merits, the burden shifts to the non-moving party to show a  
5 likelihood that its affirmative defense will succeed.” *Perfect 10, Inc. v. Amazon.com,*  
6 *Inc.*, 508 F.3d 1146, 1158 (9th Cir. 2007) (citing *Gonzales*, 546 U.S. at 429).  
7 However, “a preliminary injunction is customarily granted on the basis of procedures  
8 that are less formal and evidence that is less complete than in a trial on the merits.”  
9 *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (“A party thus is not required  
10 to prove his case in full at a preliminary injunction hearing.”).

11 **B. Stelo will Likely Succeed on the Merits of its Trademark Claims**

12 **1. Breadth of Trademark Protection**

13 “To prevail on a claim of trademark infringement, a plaintiff must show (a)  
14 ownership of a valid mark and (b) use by defendant in commerce of a mark likely to  
15 cause consumer confusion.”<sup>6</sup> *Kiva Health*, 402 F.Supp.3d at 883 (citing *Network*  
16 *Automation*, 638 F.3d at 1144). Since Stelo holds a valid registration in its “Stelo”  
17 mark, Stelo’s likelihood of success turns on its ability to demonstrate a likelihood of  
18 confusion, “which asks whether a ‘reasonably prudent’ marketplace consumer is  
19 ‘likely to be confused as to the origin of the good or service bearing one of the  
20 marks.’” *Stone Creek, Inc. v. Omnia Italian Design, Inc.*, 875 F.3d 426, 431 (9th Cir.  
21 2017) (quoting *Rearden LLC v. Rearden Commerce, Inc.*, 683 F.3d 1190, 1214 (9th  
22 Cir. 2012) (citation omitted)). “Source confusion is not the boundary, for actionable  
23 confusion includes confusion as to affiliation, connection or sponsorship.” McCarthy  
24 on Trademarks and Unfair Competition, § 23:5 (5th ed 2025) (“McCarthy”);

25  
26 <sup>6</sup> Since “[a]s a general matter, trademark claims under California law are  
27 ‘substantially congruent’ with federal claims and thus lend themselves to the same  
28 analysis,” this memorandum will discuss only federal law. *Grupo Gigante SA De*  
*CV v. Dallo & Co., Inc.* 391 F.3d 1088, 1100 (9th Cir. 2004); *Cleary v. News Corp.*,  
30 F.3d 1255, 1262–63 (9th Cir. 1994)

1 *Dreamwerks Prod. Grp., Inc. v. SKG Studio*, 142 F.3d 1127, 1130 (9th Cir. 1998)  
2 (“the question here is whether a reasonable consumer attending a Dreamwerks-  
3 sponsored convention might do so believing that it is a convention sponsored by  
4 DreamWorks”); *Tiger Lily Ventures Ltd. v. Barclays Capital Inc.*, 35 F.4th 1352,  
5 1362 (Fed. Cir. 2022) (“the relevant inquiry considers ‘if the respective products are  
6 related in some manner and/or if the circumstances surrounding their marketing are  
7 such that they could give rise to the mistaken belief that they emanate from the same  
8 source.’” (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369  
9 (Fed. Cir. 2012))).

10 Where, as here, the confusion “could result in physical harm to the consuming  
11 public, whether through failure to receive effective medication” or the failure to  
12 timely address problems with a medical device, “a stricter standard in order to prevent  
13 likelihood of confusion seems desirable.” *Syntex Labs., Inc. v. Norwich Pharmacal*  
14 *Co.*, 437 F.2d 566, 569 (2d Cir. 1971); *McLeod v. Hosmer-Dorrance, Inc.*, 76-1601,  
15 1976 WL 21104 (N.D. Cal. 1976) (“The product in question here is a medical device  
16 used in the care and treatment of serious injury; as such, there is even a greater public  
17 interest in insuring that no confusion exists as to the source of plaintiff’s and  
18 defendant’s products.”).

19 In the classic context, a likelihood of confusion is judged by whether  
20 consumers purchasing a junior user’s product are likely to be confused that they are  
21 purchasing a produced sourced or sponsored by the senior user of the mark.  
22 McCarthy §23.5 (“The most common and widely recognized type of confusion that  
23 creates infringement is purchaser confusion of source which occurs at the time of  
24 purchase: point of sale confusion.”) Trademark law, however, has expanded to reach  
25 consumer confusion outside the point of sale to include both initial interest and  
26 consumer confusion after the sale or post-sale confusion. *Id.*; *Stone Creek*, 875 F.3d  
27 at 433 (“When we widen the lens to embrace the full scope of qualifying actual  
28 confusion evidence, we credit the examples of customers seeking to purchase

1 furniture or having already purchased Bon-Ton furniture who misdirected their  
2 queries to Stone Creek.”)

3       Additionally, trademark law reaches not only instances where a junior user  
4 attempts to trade on the good name of a senior user, it also reaches reverse confusion.  
5 “[R]everse confusion occurs when a person who knows only of the well-known  
6 junior user comes into contact with the lesser-known senior user, and because of the  
7 similarity of the marks, mistakenly thinks that the senior user is the same as or is  
8 affiliated with the junior user.” *Ironhawk Techs., Inc. v. Dropbox, Inc.*, 2 F.4th 1150,  
9 1160 (9th Cir. 2021) (reversing grant of summary judgment). “This can occur when  
10 ‘the junior user’s advertising and promotion so swamps the senior user’s reputation  
11 in the market that customers are likely to be confused into thinking that the senior  
12 user’s goods are those of the junior user[.]’” *Id.* (quoting 4 McCarthy on Trademarks  
13 and Unfair Competition § 23:10 (5th ed. 2020) (citations and footnotes omitted).  
14 Reverse confusion can effectively “place the senior company’s goodwill in the hands  
15 of the junior user.” *Id.* As a result, “‘the senior user loses the value of the trademark—  
16 its product identity, corporate identity, control over its goodwill and reputation, and  
17 ability to move into new markets.’” *Id.* (quoting *Ameritech, Inc. v. Am. Info. Techs.*  
18 *Corp.*, 811 F.2d 960, 964 (6th Cir. 1987)); *see also Commerce Nat’l Ins. Servs., Inc.*  
19 *v. Commerce Ins. Agency, Inc.*, 214 F.3d 432, 445 (3d Cir. 2000) (“[T]he doctrine of  
20 reverse confusion is designed to prevent the calamitous situation [where] a larger,  
21 more powerful company usurp[s] the business identity of a smaller senior user.”).  
22 “The question in such cases is whether consumers doing business with the senior user  
23 might mistakenly believe that they are dealing with the junior user.” *Dreamwerks*,  
24 142 F.3d at 1130.

## 25               **2. Likelihood of Confusion**

26       Since direct evidence of consumer confusion can be difficult to come by,  
27 especially at the preliminary injunction stage, courts have developed surrogate  
28 measures to gauge the likelihood of confusion. *AMF Inc. v. Sleekcraft Boats*, 599 F.

2d 341, 352 (9th Cir. 1979) (“Evidence that use of the two marks has already led to confusion is persuasive proof that future confusion is likely,” but “[p]roving actual confusion is difficult[.]”). Direct evidence of actual consumer confusion in the past, however, remains the best evidence of a likelihood of confusion in the future, and a sufficient showing of actual confusion alone proves a likelihood of confusion. *Thane Int’l, Inc. v. Trek Bicycle Corp.*, 305 F.3d 894, 902 (9th Cir.2002), superseded on other grounds by statute, Trademark Dilution Revision Act of 2006, Pub. L. No. 109-312, 120 Stat. 1730–33, as recognized in *Blumenthal Distrib., Inc. v. Herman Miller, Inc.*, 963 F.3d 859, 870 (9th Cir. 2020) (“Evidence of actual confusion constitutes persuasive proof that future confusion is likely . . . If enough people have been actually confused, then a likelihood that people are confused is established.”); *Rearden LLC v. Rearden Commerce, Inc.*, 683 F.3d 1190, 1210, 103 U.S.P.Q.2d 1161 (9th Cir. 2012) (“[E]vidence of actual confusion, at least on the part of an appreciable portion of the actual consuming public, constitutes strong support for a ‘likelihood of confusion’ finding.”); *Playboy Enters., Inc. v. Netscape Comms. Corp.*, 354 F.3d 1020, 1026 (9th Cir.2004) (“a showing of actual confusion among significant numbers of consumers provides strong support for likelihood of confusion”); *Entrepreneur Media, Inc. v. Smith*, 279 F.3d 1135, 1150 (9th Cir. 2002)) (“[e]vidence of actual confusion is strong evidence that future confusion is likely”); *Daddy’s Junky Music Stores, Inc. v. Big Daddy’s Fam. Music Ctr.*, 109 F.3d 275, 284 (6th Cir. 1997) (“Evidence of actual confusion is undoubtedly the best evidence of likelihood of confusion.”) Simply, “[c]onvincing evidence of significant actual confusion occurring under actual marketplace conditions is the evidence of a likelihood of confusion.” McCarthy § 23:13. The amount of post-sale reverse confusion complied here is unprecedented and establishes a likelihood of future confusion.

The eight factors considered in this Circuit as circumstantial evidence of a likelihood of confusion are “(1) the similarity of the marks; (2) the strength of the

1 plaintiff's mark; (3) the proximity or relatedness of the goods or services; (4) the  
2 defendant's intent in selecting the mark; (5) evidence of actual confusion; (6) the  
3 marketing channels used; (7) the likelihood of expansion into other markets; and (8)  
4 the degree of care likely to be exercised by purchasers of the defendant's product."  
5 *Fortune Dynamic, Inc. v. Victoria's Secret Stores Brand Mgmt., Inc.*, 618 F.3d 1025,  
6 1030 (9th Cir. 2010). This "eight-factor analysis is 'pliant,' illustrative rather than  
7 exhaustive, and best understood as simply providing helpful guideposts." *Id.*;  
8 *Dreamwerks*, 142 F.3d at 1129 ("The factors should not be rigidly weighed; we do  
9 not count beans."); *Eclipse Assoc. Ltd. v. Data Gen. Corp.*, 894 F.2d 1114, 1118 (9th  
10 Cir.1990) ("These tests were not meant to be requirements or hoops that a district  
11 court need jump through to make the determination."). This eight-factor test is  
12 predicated on the assumption that "[w]hen the goods produced by the alleged  
13 infringer compete for sales with those of the trademark owner, infringement usually  
14 will be found if the marks are sufficiently similar that confusion can be expected.  
15 When the goods are related, but not competitive, several other factors are added to  
16 the calculus. If the goods are totally unrelated, there can be no infringement because  
17 confusion is unlikely." *Sleekcraft*, 599 F. 2d at 348. To the extent Dexcom focuses  
18 on the lack of relatedness, the existing customer confusion calls into question the  
19 third assumption. *Sleekcraft*, 599 F.2d at 352 ("Evidence that use of the two marks  
20 has already led to confusion is persuasive proof that future confusion is likely,")

21 **a) Similarity of the Marks**

22 Courts consider three principles in evaluating the similarities of the mark.  
23 "First, [s]imilarity is best adjudged by appearance, sound, and meaning . . . Second,  
24 the 'marks must be considered in their entirety and as they appear in the marketplace  
25 . . . Third, similarities are weighed more heavily than differences." *Ironhawk Techs.*,  
26 2 F.4th at 1164 (simplified and additional quotations omitted). "Obviously, the  
27 greater the similarity between the two marks at issue, the greater the likelihood of  
28 confusion." *Id.*

1 Stelo’s and Dexcom’s use of “Stelo” is virtually identical in sight, sound, and  
2 meaning. While Dexcom may reference the use of its house mark in connection with  
3 Stelo (*i.e.*, Stelo by Dexcom), “in a reverse confusion case the junior user’s use of a  
4 house mark can also aggravate confusion by reinforcing the association between the  
5 mark and the junior user.” *Ironhawk Techs.*, 2 F.4th at 1164 (citing *Americana*  
6 *Trading Inc. v. Russ Berrie & Co.*, 966 F.2d 1284 (9th Cir. 1992)).

7 This factor tips decidedly in Stelo’s favor.

8 **b) The Strength of the Mark**

9 In the reverse confusion context, the strength of the mark is judged from the  
10 perspective of the junior user. *Lodestar Anstalt v. Bacardi & Co. Limited*, 31 F.4th  
11 1228 (9th Cir. 2022) (“the strength-of-the-mark factor in this reverse confusion case  
12 focuses on ‘whether the junior mark is so commercially strong as to overtake the  
13 senior mark.’” (quoting *Ironhawk Techs.*, 2 F.4th at 1162 (simplified))).  
14 Additionally, “[i]n a prototypical reverse confusion case [like this], a senior user with  
15 a commercially weaker mark is pitted against a junior user with a far stronger mark.  
16 Accordingly, instead of considering the commercial strength of the junior’s mark in  
17 isolation, we look to its relative strength as compared to that of the senior, ‘because  
18 it is the strength of the larger, junior user’s mark which results in reverse confusion.’”  
19 *Grubhub Inc. v. Relish Labs LLC*, 80 F.4th 835, 852 (7th Cir. 2023) (quoting *A & H*  
20 *Sportswear, Inc. v. Victoria's Secret Stores, Inc.*, 237 F.3d 198, 231 (3d Cir.2000)).  
21 So here, the Court “evaluate[s] the conceptual strength of [Stelo’s] mark and compare  
22 it to the commercial strength” of Dexcom’s use of that mark. *Ironhawk Techs.*, 2  
23 F.4th at 1162.

24 “Where, as here, the Trademark Office issued a registration without requiring  
25 proof of secondary meaning, the federal registration provides prima facie evidence  
26 that the [Stelo] mark is inherently distinctive . . . .” *Ironhawk Techs.*, 2 F.4th at 1162.

27 The commercial strength of Dexcom’s use of “Stelo” “is based on actual  
28 market recognition.” *Good Meat Project v. GOOD Meat, Inc.*, 716 F.Supp.3d 783



(N.D. Cal. 2024) (“It is a fact-intensive inquiry that need not be reached at the preliminary injunction stage.”). Commercial strength is signified by “extensive advertising, length of time in business, public recognition, and uniqueness.” *Century 21 Real Est. Corp. v. Sandlin*, 846 F.2d 1175, 1179 (9th Cir. 1988). Although the Stelo Monitor has been on the market for less than a year, it has already garnered significant public recognition as evidenced by Google search results for “Stelo,” the first 10 pages of which almost exclusively refer to the Stelo Monitor as well as public accolades for it being the first over-the-counter continuous glucose monitor marketed to persons with prediabetic conditions. Exs. 11 and 15. While Dexcom has not separately reported sales and marketing figures associated with its Stelo Monitor, Dexcom in 2024 had \$4 billion in revenues and spent nearly \$300 million on marketing and advertising. Ex. 3 at 224.

By contrast, Stelo rebranded from StarQuest less than three years ago, had revenues total \$4 million in 2024 and spend 18% of revenues on advertising and marketing that year. Rampel Decl. ¶ 2.

Simply, “given the overwhelming commercial strength of” Dexcom’s use of the “Stelo” name in comparison to Stelo’s commercial strength, “this factor weighs in favor of a likelihood of confusion.” *Lodestar Anstalt v. Bacardi & Co. Ltd.*, 31 F.4th 1228 (9th Cir. 2022) (the district court erred in finding this factor tipped against a likelihood of confusion).

c) **Relatedness of the Goods and Marketing Channels**  
**Used**

Dexcom will likely emphasize that its Stelo Monitor is in no way related to any of Stelo’s enterprise software offerings and the goods are sold through different channels. Direct competition, however, is not a requirement. *Good Meat Project*, 716 F.Supp.3d at 800 (“The companies do not need to be direct competitors.”). Instead, “[r]elated goods are those ‘products which would be reasonably thought by the buying public to come from the same source if sold under the same mark.’”



1 *Sleekcraft*, 599 F.2d at 348 n. 10 (quoting *Standard Brands, Inc. v. Smidler*, 151 F.2d  
2 34, 37 (2d Cir. 1945)). “To determine whether goods are related, courts may consider  
3 whether the goods are complementary, whether the products are sold to the same  
4 class of purchasers, and whether the goods are similar in use and function.”  
5 *Groupon, LLC v. Groupon, Inc.*, 859 F. Supp. 2d 1067, 1074 (N.D. Cal. 2012).  
6 “[T]he relatedness of each company’s prime directive isn’t relevant. Rather, [the  
7 Court] must focus on [Dexcom’s] customers and ask whether they are likely to  
8 associate [Stelo, a software company] with” the Stelo Monitor that leverages and  
9 promotes software as a competitive advantage. *Dreamwerks*, 142 F.3d at 1131. The  
10 stronger the mark, the larger shadow it casts across industries. *Tiger Lily*, 35 F.4th at  
11 1363 (affirming Trademark Trial and Appeal Board finding of a likelihood of  
12 confusion between the use of Lehman Brothers for beer and spirits with the financial  
13 services company).

14 Stelo concedes that Dexcom’s efforts to register “Stelo” in the same software  
15 class as the ‘605 Registration and the examiner’s issuance an Office Action finding  
16 a likelihood of confusion are not determinative here on the issue of relatedness.  
17 *Carter-Wallace, Inc. v. Procter & Gamble Co.*, 434 F.2d 794, 802 (9th 1970) (“Any  
18 such determination made by the Patent Office under the circumstances just noted  
19 must be regarded as inconclusive since made at its lowest administrative level . . .”).  
20 But it is not irrelevant, especially as to the issue of intent. *Theorem, Inc. v. Citrusbyte,*  
21 *LLC*, CV 21-4660-GW-AGR<sub>x</sub>, 2021 WL 5750238, \*6 (C.D.Cal. Nov. 16, /2011)  
22 (“While Defendants attempt to argue away the import of their continued rebranding  
23 after the USPTO’s initial notice, the Court finds that Defendants took a calculated  
24 risk that is ultimately proving costly.”).

25 While Dexcom may believe that the relatedness factor tips decidedly in its  
26 favor, its own actually confused customers mitigate against such a finding. Some  
27 confused customers acknowledge that Stelo’s software offerings are distinct from the  
28 Stelo Monitor but still maintain that the software company is affiliated with Dexcom

1 in some manner. Sheridan Decl. ¶ 8. Simply, in the reverse confusion context, where  
2 the junior user's use of a mark casts a large shadow, the more rigid notions of  
3 relatedness discussed in forward confusion cases should be relaxed. (*Ironhawk*, 2  
4 F.4th at 1164 (finding error in the district court's conclusion that product was  
5 unrelated since senior user sold exclusively to the government); *Dreamwerks*, 142  
6 F.3d at 1131-32 (reversing grant of summary judgment, finding "that Dreamwerks  
7 convention-goers might well assume that DreamWorks decided to ride the coattails  
8 of Spielberg's unparalleled reputation for sci-fi/adventure films . . . into the sci-fi  
9 merchandising business"); *Theorem, Inc.*, WL 5750238, \*7 (finding digital  
10 marketing company and a custom software solutions company were sufficiently  
11 related to warrant a preliminary injunction).

12 **d) Dexcom's Intent**

13 "In the reverse confusion context," such as here, the question to ask with  
14 respect to intent is "whether there is some evidence that the junior user, when it knew  
15 of the senior user, was at fault for not adequately respecting the rights of the senior  
16 user." *Ironhawk*, 2 F.4th 1167-68 (quoting 4 McCarthy on Trademarks and Unfair  
17 Competition § 23:10 (5th ed. 2020)). In the reverse confusion context, courts have  
18 consistently found the junior user's disregard for the senior user's rights sufficient to  
19 tip this factor in favor of the junior user. "This factor 'favors the plaintiff' "where the  
20 alleged infringer adopted his mark with knowledge, actual or constructive, that it was  
21 another's trademark." *Id.* (quoting *JL Beverages Co., LLC v. Jim Beam Brands Co.*,  
22 828 F. 3d 1098 at 1111– 12 (9th Cir. 2016) (quoting *Brookfield Commc'ns, Inc. v. W.*  
23 *Coast Ent. Corp.*, 174 F.3d 1036, 1059 (9th Cir. 1999))). "Intent can be shown  
24 through evidence that the junior user deliberately intended to push the senior out of  
25 the market by flooding the market with advertising to create reverse confusion, or  
26 'by evidence that, for example, the [junior] knew of the mark, should have known of  
27 the mark, intended to copy the [senior], failed to conduct a reasonably adequate  
28 trademark search, or otherwise culpably disregarded the risk of reverse confusion."

1 *Id.* (quoting *Marketquest Grp., Inc. v. BIC Corp.*, 862 F.3d 927, 934–35 (9th Cir.  
2 2017)).

3 Here, there is no question that Dexcom knew of Stelo’s rights. It not only  
4 received an Office Action identifying a likelihood of confusion, but Stelo itself  
5 notified Dexcom of the substantial reverse confusion resulting from the launch of the  
6 Stelo Monitor along with Dexcom’s aggressive marketing thereof. Gatling Decl. ¶¶  
7 6-9. Moreover, Dexcom’s own confused customers suggest Dexcom itself fueled the  
8 confusion by providing its customers with Stelo’s support number. Sheridan Decl. ¶  
9 8. While Dexcom may argue against consideration being given to the Office Action,  
10 “it took a calculated risk that is ultimately proving costly.” *Theorem, Inc.*, WL  
11 5750238, \*8 (“Even if the Court accepts Defendants’ assertions that it did not act in  
12 bad faith, Defendants willingly took the reckless step of continuing their rebranding  
13 in the face of the aforementioned issues/problems.”).

14 The intent factor tips decidedly in Stelo’s favor.

15 **e) Actual Confusion**

16 The three thousand instances of actual confusion received by Stelo over the  
17 last 11 months are unprecedented in trademark jurisprudence and, as discussed  
18 above, alone warrant the grant of a preliminary injunction. While the confusion at  
19 issue may not be at the point of sale, the Ninth Circuit previously reversed a grant of  
20 summary judgment, where a district court failed to give due consideration to actual  
21 post-sale confusion evidence. *Stone Creek*, 875 F.3d at 431.

22 Dexcom in opposition can be expected to go all in to diminish this evidence.  
23 The confusion here, however, cannot be classified as *de minimis* misdirected  
24 inquiries or deliveries. *Checkpoint Sys., Inc. v. Check Point Software Techs., Inc.*,  
25 269 F.3d 270, 297-98 (3rd 2001) (“[T]his confusion consisted of misdirected calls  
26 and therefore it is uncertain whether the consumers were confused by the parties’  
27 similar names or whether directory assistance erred in connecting consumers with  
28 the parties.”); *Credit One Corp. v. Credit One Fin., Inc.*, 661 F.Supp.2d 1134, 1139

(C.D. Cal. 2009) (“Plaintiff’s proffered evidence of telephone calls and Western Union payments apparently intended for Defendants are more properly characterized as ‘misdirected communications’ than evidence of actual confusion.”); *Delta Forensic Engineering, Inc. v. Delta V Biomechanics, Inc.*, 402 F.Supp.3d 902, 910 (C.D. Cal. 2019) (“[T]he Federal Express package and the purported misdirected checks are no more than misdirected communications unrelated to actual confusion.”). Moreover, the actual confusion here is indisputable confusion among Dexcom’s actual customers, and not that of competitors, vendors, or the general public, even though such evidence can be relevant as well. *Theorem*, 2021 WL 5750238, \*9 (finding “that the actual confusion by sophisticated entities that were working with or for Plaintiff could serve as a proxy for consumer confusion because the entities were sophisticated but still exhibited confusion between the two marks.”).

Stelo also agrees that time and a denominator – the number of potential instances of confusion – can militate against the probative value of actual confusion evidence. *Lerner & Rowe PC v. Brown Engstrand & Shely LLC*, 119 F.4th 711 (9th Cir. 2024) (finding 236 calls between 2017-2021 “constitute[d] only 0.216% of the total number of users exposed to the challenged advertisements.”) No court, however, has confronted this level of confusion in a similar time frame, and Stelo has no insight into the number of Stelo Monitors sold during this time frame.

The intent to confuse factor tips decidedly in Stelo’s favor.

**f) Likelihood of Expansion**

It is well-recognized that “reverse confusion can foreclose the senior user from expanding into related fields” and is a harm that the doctrine seeks to avoid. *Ironhawk*, 2 F.4th 1160. Here, Stelo has a stated intent to expand its enterprise business into the consumer marketplace by developing applications for smartphones that allow interoperability with its existing software solutions. Rampel Decl. ¶ 4. Additionally, Stelo is a software solution company that integrates data across platforms. *Id.* As medical monitoring systems leave the lab and doctor’s offices and

1 are available directly to consumers, it is logical that the medical device community  
2 will need to integrate various sensors collecting data with devices that make the data  
3 readily accessible to consumers like by smartphone. Absent an injunction, any  
4 medical device company seeking a partner to help facilitate this integration will likely  
5 confuse Stelo with the Stelo Monitor and Dexcom, making Stelo beholden to  
6 Dexcom's reputation.

7 The likely expansion factor tips in Stelo's favor.

8 **g) The Consumer's Degree of Care**

9 Stelo agrees that its customers are sophisticated, and its existing customers are  
10 not likely to confuse the Stelo Monitor with its enterprise software. But the confusion  
11 here is not forward but reverse. As Dexcom captures more and more of the air around  
12 the Stelo name, it would not be unreasonable for potential Stelo consumers to  
13 perceive Stelo, a software company, as simply a division of Dexcom, which sells the  
14 Stelo Monitor, touting the software integration of its sensors with its smartphone  
15 application. Such a loss of independence effectively constitutes reverse initial interest  
16 confusion. Simply, a search for Stelo on the internet brings up a plethora of references  
17 to the Stelo Monitor that likely will bias a potential customer depending on their  
18 opinion of Dexcom or an affiliation of a software company with an over-the-counter  
19 consumer glucose monitor. Ex. 15. The overwhelming association of "Stelo" with  
20 the Stelo Monitor has the effect of a reverse dilution, diluting any independent  
21 identification of "Stelo" with the enterprise software company, which is a harm the  
22 Lanham Act should protect against.

23 **C. Irreparable Harm**

24 "By statute, [Stelo] is entitled to a rebuttable presumption of irreparable harm  
25 on its trademark claim" since it has demonstrated a likelihood of success on the merits  
26 either through its direct evidence of overwhelming actual confusion or because the  
27 weight of the *Sleekcraft* circumstantial factors tip decidedly in its favor. *AK Futures*,  
28 35 F.4th at 688 (citing 15 U.S.C. § 1116(a)). This presumption "is a heavy one in

1 view of the reality that monetary compensation for trademark infringement is, in the  
2 language of equity, inherently ‘inadequate’ and injury is fundamentally  
3 ‘irreparable.’” McCarthy 30:47; *AK Futures*, F.4th at 694 (it is insufficient for a  
4 defendant to merely stop selling products under the infringing mark).

5 Even if this Court were to find that Stelo is not entitled to a presumption of  
6 irreparable harm because it has shown only serious questions going to the merits,  
7 overwhelming evidence exists that Stelo will be irreparably harmed by Dexcom’s  
8 continued use of “Stelo” in connection with its monitor. *San Diego Comic*  
9 *Convention v. Dan Farr Prods.*, 336 F.Supp.3d 1191, 1197 (S.D. Cal. 2018)  
10 (evidence of significant actual confusion warrants a finding of irreparable harm);  
11 *Gianni Versace, S.p.A., v. Versace 19.69 Abbigliamento Sportivo SRL*, 328  
12 F.Supp.3d 1007, 1032 (N.D. Cal. 2018) (same). While Stelo has no evidence that it  
13 has lost any sales to Dexcom because of the latter’s use of the Stelo name, the  
14 overwhelming amount of actual consumer confusion has buried support requests  
15 directed to Stelo resulting in response delay. Sheridan Decl. ¶ 15. Moreover, the  
16 loss of “Stelo’s” association with Stelo is a well-recognized harm to the goodwill and  
17 reputation of a rights holder that is irreparable, warranting a preliminary injunction  
18 even if Stelo were only able to demonstrate serious questions going to the merits of  
19 its claim. Without an injunction, Stelo will have no choice but to change its name for  
20 the second time in five years, which will likely further damage its goodwill and  
21 reputation in a manner that money cannot compensate. Rampel Decl. ¶ 21. While it  
22 may be true that money can compensate Stelo for the cost of any rebranding, the true  
23 harm from rebranding is reputational and not simply the costs associated with identity  
24 and implementing a new name.

25 Dexcom will undoubtedly argue that the 11 months that have passed since it  
26 launched the Stelo Monitor militates against any irreparable harm. *Oakland Tribune,*  
27 *Inc. v. Chronicle Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985) (“[L]ong delay before  
28 seeking a preliminary injunction implies a lack of urgency and irreparable harm.”).



1 “[D]elay[, however,] is but a single factor to consider in evaluating irreparable  
2 injury” and that “courts are ‘loath to withhold relief solely on that ground.’” *Arc of*  
3 *Cal. v. Douglas*, 757 F.3d 975, 990 (9th Cir. 2014) (quoting *Lydo Enters., Inc. v. City*  
4 *of Las Vegas*, 745 F.2d 1211, 1214 (9th Cir. 1984)).

5 Stelo has not been sitting on its rights. Stelo, through counsel, promptly  
6 reached out to Dexcom’s counsel and began discussing whether a coexistence  
7 agreement would be possible. Gatling Decl. ¶ 7. Thereafter, and as the instances of  
8 actual confusion did not subside, Stelo sought an informal resolution to the ongoing  
9 actual confusion, but to no avail. *Id.* at ¶¶ 8-10; *Arc of Cal.*, 757 F.3d at 990 (where  
10 there are “ongoing, worsening injuries,” delay is not terribly probative). Simply, no  
11 court has found a delay of this sort sufficient to overcome a presumption of  
12 irreparable harm, let alone the evidence of actual harm that Stelo has presented.  
13 *Compare Kiva Health*, 402 F.Supp.3d at 897 (where the plaintiff knew of infringing  
14 use in 2015 and sent its first cease in desist in 2018).

15 **D. Balance of Equities**

16 “Courts must balance the competing claims of injury and must consider the  
17 effect on each party of the granting or withholding of the requested relief.” *Winter v.*  
18 *Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). In response to  
19 Stelo’s irreparable harm, Dexcom can be expected to argue that it will suffer a greater  
20 detriment due to its larger size. Detriment that is the product of an infringer’s conduct,  
21 however, is not the type of harm relevant to the balance of equities. *2Die4Kourt v.*  
22 *Hillair Capital Mgmt.*, 692 F. App’x 366, 369 (9th Cir. 2017) (“[W]hen the harm  
23 complained of results from a defendant’s allegedly infringing conduct, we have  
24 nonetheless approved the entry of a preliminary injunction.”); *Cadence Design Sys.*  
25 *v. Avant! Corp.*, 125 F.3d 824, 829 (9th Cir. 1997) (stating defendant who knowingly  
26 infringes another’s copyright “cannot complain” when properly required to cease  
27 infringing activities). Simply, “Ninth Circuit precedent holds that defendants cannot  
28 complain of alleged harms to its business ‘when properly forced to desist from [their]



1 infringing activities.” *Lashify, Inc. v. Urban Dollz LLC*, CV 22-6148-GW-AFMx,  
2 2022 WL 18281527, \*12 (C.D. Cal. Dec. 14, 2022) (quoting *Triad Sys. Corp. v. Se.*  
3 *Express Co.*, 64 F.3d 1330, 1338 (9th Cir. 1995). Additionally, Stelo’s proposal that  
4 Dexcom be given a 90-day grace period to comply with any preliminary injunction  
5 would mitigate any initial harm claimed by Dexcom.

6 Thus, the balance of equities tip in Stelo’s favor.

7 **E. Public Interest**

8 “The public interest analysis for the issuance of a preliminary injunction  
9 requires [the Court] to consider whether there exists some critical public interest that  
10 would be injured by the grant of preliminary relief.” *Alliance for the Wild Rockies*,  
11 632 F.3d at 1138 (citation omitted). “Trademarks protect the public from confusion  
12 by accurately indicating the source of a product.” *State of Idaho Potato Comm’n v.*  
13 *G & T Terminal Packaging, Inc.*, 425 F.3d 708, 715 (9th Cir. 2005). Additionally,  
14 this public interest is heightened when the confusion at issue relates to a medical  
15 device. *McLeod*, 1976 WL 21104. “Here, given the strong public policy in favor of  
16 mitigating customer confusion coupled with Plaintiff’s strong showing of a  
17 likelihood of success on the merits, the . . . the public interest supports issuance of a  
18 preliminary injunction.” *Las Vegas Sands Corp. v. Fan Yu Ming*, 360 F.Supp.3d  
19 1072, 1081 (D. Nev. 2019).

20 **F. Bond**

21 Under Rule 65(c), “[t]he court may issue a preliminary injunction . . . only if  
22 the movant gives security in an amount that the court considers proper to pay the  
23 costs and damages sustained by any party found to have been wrongfully enjoined or  
24 restrained.” Fed. R. Civ. Proc. 65(c). Despite the seemingly mandatory language,  
25 “Rule 65(c) invests the court with discretion as to the amount of security required, if  
26 any.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (quoting *Barahona–*  
27 *Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)). Additionally, “the language of  
28 Rule 65(c) does not absolve the party affected by the injunction from its obligation

1 of presenting evidence that a bond is needed.” *Conn. Gen. Life Ins. Co. v. New*  
2 *Images of Beverly Hills*, 321 F.3d 878, 883 (9th Cir. 2003).

3 A likelihood of success on the merits warrants a more nominal bond in line  
4 with a senior user’s ability to pay irrespective of the claims of injury to a much larger  
5 junior user. *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1211 (9th Cir. 2000)  
6 (upheld trial court’s rejection of defendant Disney’s request to increase bond from  
7 \$25,000 to \$20 million); *2Die4Kourt*, 692 F. App’ at 369 (“[T]he likelihood of  
8 success on the merits, as found by the district court, tips in favor of a minimal bond  
9 or no bond at all.”)

10 Stelo suggests a bond of not more than \$50,000.

11 **IV. CONCLUSION**

12 For the foregoing reasons, Stelo requests that the Court grant its motion and  
13 preliminarily enjoin Dexcom’s continued use of the “Stelo” mark.

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